

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7091

RICARDO ST. AUBIN GREEN,

Petitioner - Appellant,

versus

DAVID CHESTER,

Respondent - Appellee,

and

STATE OF NORTH CAROLINA,

Respondent.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (CA-00-144-5-BO)

Submitted: December 16, 2002

Decided: December 19, 2002

Before LUTTIG, MICHAEL, and MOTZ, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Ricardo St. Aubin Green, Appellant Pro Se. Diane Appleton Reeves,
NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Ricardo St. Aubin Green, a state prisoner, seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000). We dismiss the appeal of the district court's denial of Green's § 2254 petition for lack of jurisdiction because Appellant's notice of appeal was not timely filed as to that order.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, see Fed. R. App. P. 4(a)(1), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order denying Green's § 2254 petition was entered on the docket on April 10, 2001. Appellant's notice of appeal was filed on April 28, 2002. Because Appellant failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability and dismiss the appeal.

Green's notice of appeal is timely, however, as to the district court's order denying his Fed. R. Civ. P. 60(b) motion to reconsider. We review the denial of a Rule 60(b) motion for abuse

of discretion. NOW v. Operation Rescue, 47 F.3d 667, 669 (4th Cir. 1995). Because Green's motion stated no viable ground for relief under the rule, we find no abuse of discretion. Accordingly, we affirm the ruling of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART

AND AFFIRMED IN PART